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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 4384-0104PUS1												
	Application Number 10/090,008	Filed March 5, 2002												
	First Named Inventor Alexander KAMISHNY et al.													
	Art Unit 1743	Examiner L. Alexander												
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s): Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table><tr><td><input type="checkbox"/></td><td>applicant /inventor.</td><td rowspan="2"> Signature #28,781</td></tr><tr><td><input type="checkbox"/></td><td>assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td></tr><tr><td><input type="checkbox"/></td><td>attorney or agent of record. Registration number _____</td><td> Paul C. Lewis Typed or printed name</td></tr><tr><td><input checked="" type="checkbox"/></td><td>attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. 43,368</td><td>(703) 205-8000 Telephone number January 24, 2006 Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of 1 forms are submitted.</p>				<input type="checkbox"/>	applicant /inventor.	 Signature #28,781	<input type="checkbox"/>	assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<input type="checkbox"/>	attorney or agent of record. Registration number _____	 Paul C. Lewis Typed or printed name	<input checked="" type="checkbox"/>	attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. 43,368	(703) 205-8000 Telephone number January 24, 2006 Date
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Docket No.: 4384-0104PUS1
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Alexander KAMISHNY, et al.

Application No.: 10/090,008

Confirmation No.: 4395

Filed: March 5, 2002

Art Unit: 1743

For: DIAGNOSTIC BEADS FOR THE DETECTION
OF BLOOD IN ANIMAL EXCRETA AND A
METHOD FOR PRODUCTION THEREOF Examiner: L. ALEXANDER

STATEMENT IN SUPPORT OF PRE-APPEAL BRIEF CONFERENCE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully request review of the Final Rejection in the above-identified application on the following three grounds:

First ground -- perlite

Claims 57-60 were rejected under 35 U.S.C. §103(a) as being unpatentable over US 5,468,450 (Michael) in view of US 6,376,252 (Van Lente). Claims 61 and 62 were rejected under 35 U.S.C. §103(a) as being unpatentable over Michael in view of Van Lente and ES 2,025,025 (Tharrault).

Each of claims 58 and 62 herein expressly requires perlite as a particulate carrier. The Examiner has not shown that the prior art suggests the use of perlite in the context of the present invention. In their Amendment filed May 23, 2005, Applicants addressed this issue as follows:

With respect to the Examiner's treatment of perlite, on page 3 of the Office Action, it is respectfully submitted that information alleged by an Examiner to be "well known" in

the industry but which is not supported in the record is an improper basis for finding motivation in the prior art to support a ruling of obviousness. Generalized allegations of what the skilled artisan would have been “well aware” do not satisfy the level of specificity required under the MPEP. The Examiner must point to some concrete evidence in the record, rather than relying on its assessment of what is “well recognized” or of what a skilled artisan would be “well aware.” It is improper to rely upon “common knowledge and common sense” of person of ordinary skill in art to find invention obvious over combination of two prior art references. The absence any specific hint or suggestion in particular reference to support combination constitutes omission of relevant factor required by precedent. *In re Lee*, 61 USPQ2d 1430.

In the Final Rejection of August 24, 2005, the Examiner failed to address this issue in any way. The Examiner likewise failed to address this issue in the Advisory Action of November 23, 2005.

Applicants respectfully request that at least claims 58 and 62 be indicated to be allowable. Alternatively, Applicants request that the Examiner reopen prosecution and address this issue of support in the prior art for the rejection of claims herein specifying the material “perlite”. It is pointed out that this issue was raised by Applicants in a timely manner, in their Amendment filed May 23, 2005.

Second ground – spherical particles

Claims 57-60 were rejected under 35 U.S.C. §103(a) as being unpatentable over US 5,468,450 (Michael) in view of US 6,376,252 (Van Lente).

The Examiner’s statement of the rejection is based upon an erroneous premise, and in any case does not go far enough to state a sustainable rejection under 35 U.S.C. §103(a). The Examiner’s erroneous premise is that “one having ordinary skill in the art would have read the art as teaching spherical particles”. Advisory Action, 3rd page. The statement of the rejection ignores the quantitative claim recitation of “granule-like particles having a diameter of 2 – 5 mm” and instead simply refers to the prior art as allegedly teaching “spherical particles”.

Michael’s generic disclosure contains the words “particle diameters of between about 1 and 40 mm” and the word “spheres”. However, generic disclosure, when it is merely words, does not necessarily “teach” everything that it says. Persons of ordinary skill in the art consider the entire disclosure of a document in order to determine what the document actually *teaches*, in

the sense of *enables*. The Michael patent does not enable spherical or bead-type particles having diameters in the range 2-5 mm. Michael clearly does not “teach” enough about spherical particles to render any aspect of the presently claimed invention obvious.

Michael generically recites that the “material may be in the form of sheets, strips, shreds, discs, other decorative shapes such as stars or animal shapes, cubes, spheres, or irregular particles, among other shapes”. However, the thrust of the Michael disclosure – that is, what Michael actually teaches – is that relatively large, flat substrates should be employed for the detection composition. Michael specifically discloses ¼ inch (6.35 mm) diameter discs or squares. Michael’s One Step example uses a hole puncher to make ¼ inch diameter discs or a strip cutter to make ¼ inch squares of its cellulose sheets. Michael’s Two Step example also uses cut squares or punched discs of compressed cellulose sponge vehicle. Van Lente provides “test strip materials which can be subdivided into pieces”. Column 2, lines 1-5. In Van Lente, “once the stripes or pieces of matrix test paper are dried, for the second dip they are then cut in sizes and shapes (diamond shape is satisfactory)”. Column 4, lines 23-27.

Clearly, the suggestion – that is, the enabled teaching – of the prior art in question is to provide relatively large, *flat* substrate for the detection composition. Such substrates differ significantly from the diagnostic beads recited in the present claims. The prior art relied upon fails to enable or motivate persons of ordinary skill in the art to employ “diagnostic beads”, as expressly required by the present claims. Moreover, the thrust of the prior art disclosures upon which the Examiner relies in the present rejection is *cutting* to shape the substrate.

It is respectfully submitted that the Examiner has failed to state a sustainable rejection of any of claims 57-60.

Third ground – inoperative combination

Claims 61 and 62 were rejected under 35 U.S.C. §103(a) as being unpatentable over Michael in view of Van Lente and ES 2,025,025 (Tharrault).

The deficiencies of the Michael and Van Lente references are as discussed above. Nothing in the newly cited Tharrault patent remedies the deficiencies of the primary references. As noted above, Michael generically recites that the “material may be in the form of sheets,

strips, shreds, discs, other decorative shapes such as stars or animal shapes, cubes, spheres, or irregular particles, among other shapes”. The thrust of the Michael disclosure is that relatively large, flat substrates should be employed for the detection composition. Van Lente provides “test strip materials which can be subdivided into pieces”. In Van Lente, “once the stripes or pieces of matrix test paper are dried, for the second dip they are then cut in sizes and shapes (diamond shape is satisfactory)”.

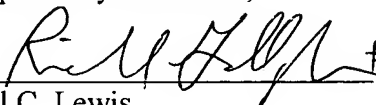
The Tharrault disclosure is not logically combinable with either Michael or Van Lente. They teach sheets, strips, shreds, discs, etc. The Examiner fails to demonstrate how Tharrault’s teachings relating to granulation are relevant to the sheets, strips, shreds, discs, etc. taught by Michael and Van Lente. It is axiomatic that the proposed modification of the technology of a primary reference cannot change the principle of operation of a reference. MPEP 2143.01. In the present rejection, the Tharrault modification suggested by the Examiner would dramatically change the products as they are contemplated by Michael and Van Lente.

It is respectfully submitted that the Examiner has failed to state a sustainable rejection of either of claims 61 and 62.

Please contact Richard Gallagher (Registration No. 28,781) at (703) 205-8008 with any questions.

Dated: January 24, 2006

Respectfully submitted,

By  #28,781

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